

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON, et al.,

PLAINTIFFS,

v.

U.S. DEPARTMENT OF
TRANSPORTATION et al.,

DEFENDANTS.

NO. 2:25-cv-00848

DECLARATION OF SHANTE
HASTINGS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

DECLARATION OF STATE
OF DELAWARE IN SUPPORT
OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION

ATTORNEY GENERAL OF WASHINGTON
Environmental Protection Division
800 Fifth Avenue STE 2000
Seattle, WA 98104
206-464-7744

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2 I, Shanté A. Hastings, declare under the penalty of perjury pursuant to 28 U.S.C. §
3 1746 that the foregoing is true and correct:
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5 1. I am a resident of the State of Delaware (the “State”). I am over the age of 18
6 and have personal knowledge of all the facts stated herein, except to those matters stated upon
7 information and belief; as to those matters, I believe them to be true. If called as a witness, I
8 could and would testify competently to the matters set forth below.

9 2. I am currently employed by the Delaware Department of Transportation
10 (“DelDOT”) as Cabinet Secretary.

11 3. As DelDOT Cabinet Secretary, I am responsible for the State’s transportation
12 systems, operations, strategic priorities, and to ensure safe, efficient and sustainable mobility
13 for the traveling public.
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15 4. DelDOT relies on a combination of State and Federal funding to support its
16 operations, maintenance and infrastructure projects. While State revenues fund a significant
17 portion of DelDOT’s budget, Federal funding remains a critical component. DelDOT’s ability
18 to plan and execute long-term improvements often depends on the stability and availability of
19 Federal transportation programs and grants.
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21 5. In line with Delaware’s Climate Action Plan, DelDOT is committed to reducing
22 transportation-related greenhouse gas emissions through strategies that promote sustainability,
23 improve air quality, and support climate goals. This includes advancing the electrification of
24 vehicles by investing in electric vehicles (“EV”) infrastructure, incorporating EVs into its fleet,
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1 and collaborating with State and regional partners to expand access to clean transportation
2 options.

3 6. Like many states, Delaware expected the National Electric Vehicle
4 Infrastructure (“NEVI”) Formula Program established in the Infrastructure Investment and
5 Jobs Act (“IIJA”) to play a critical role in the State’s ability to transition to electrification of
6 vehicles. See IIJA, Pub. L. No. 117-58, 135 Stat. 429 (2021).

7 7. The IIJA allocated \$5 billion over Federal fiscal years 2022 - 2026 for the NEVI
8 Formula Program to fund strategic deployment of electric vehicle (“EV”) charging
9 infrastructure. The Federal Highway Administration (“FHWA”) administers the NEVI
10 program. Each state is required to submit a State Electric Vehicle Infrastructure Deployment
11 Plan (“State Plan”) for each fiscal year describing how the state intends to use the NEVI funds.
12

13 8. The IIJA further requires the Secretary of Transportation, within ninety (90)
14 days of the statute’s enactment and in coordination with the Secretary of Energy, to develop
15 “guidance for States and localities to strategically deploy electric vehicle charging
16 infrastructure” consistent with the NEVI Formula Program provisions of the IIJA (“NEVI
17 Formula Program Guidance”). FHWA issued NEVI Formula Program Guidance on February
18 10, 2022, and has updated the guidance annually.
19

20 9. Delaware prepared and provided to the FHWA its State Plans for fiscal years
21 2022-2025 describing how it intended to use its share of funds to carry out the NEVI Formula
22 Program. DelDOT’s first NEVI plan for Federal fiscal years 2022 - 2023 was approved by
23 FHWA on September 14, 2022. This plan provided the framework for DelDOT to develop a
24 network of EV charging along major travel corridors. Focusing on the installation of new DC
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1 fast-charging stations along Delaware's Alternative Fuel Corridors (AFC) to support the goal
2 of the NEVI Formula Funding Program to facilitate a national EV charging network.

3 DelDOT's NEVI plan update for federal fiscal year 2024 was approved by FHWA on
4 September 29, 2023. This plan addressed NEVI Program guideline updates as well as the
5 progress DelDOT had made with the planning stage of DelDOT's NEVI Program. On
6 November 15, 2024, FHWA approved DelDOT's NEVI plan update for federal fiscal year
7 2025. This plan provided updates on DelDOT's NEVI Program including the release of its
8 first round of Request for Proposals for the NEVI program and EV charging station
9 deployment along the AFC corridors. Other items discussed in this plan include state agency
10 coordination, public engagement, contracting updates, and existing and future conditions
11 analysis.
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14 10. The FHWA approved DelDOT's State Plans in letters dated September 14,
15 2022; September 29, 2023; and November 15, 2024 (the "State Plan Approvals"). Each letter
16 explicitly stated that "[w]ith this approval, Fiscal Year . . . funds are now available to Delaware
17 for obligation."

18 11. \$2,617,339 was allocated for Federal fiscal year 2022, \$3,766,380 was allocated
19 for Federal fiscal year 2023, \$3,766,406 was allocated for Federal fiscal year 2024, and
20 \$3,766,409 was allocated for Federal fiscal year 2025.
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22 12. To date, DelDOT has obligated \$10,150,125 for NEVI Program eligible
23 expenses, including proposals for NEVI funded EV charging infrastructure along Delaware
24 AFC routes and NEVI program support. To date, DelDOT has finalized two NEVI contracts
25 for three sites across the state. Two of the three sites have already broken ground and should
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1 be operational and made available for public use this summer. Several other contracts are in the
2 final stages of wrapping up the contract language.

3 13. On January 20, 2025, President Trump issued an Executive Order (“EO”)
4 entitled Unleashing American Energy. Section 7(a) of the EO directs all agencies to
5 “immediately pause disbursement of funds appropriated through” the IIJA, “including but not
6 limited to funds for electric vehicles charging stations made available through the [NEVI]
7 Program.”

8 14. On February 6, 2025, DelDOT received a letter from Emily Biondi, the
9 Associate Administrator for the Office of Planning, Environment and Realty in the FHWA,
10 with the subject “Suspending Approval of State Electric Vehicle Infrastructure Deployment
11 Plans.”

12 15. The February 6 letter informed State Transportation Directors that the new
13 leadership of DOT “has decided to review the policies underlying the implementation of the
14 NEVI Formula Program” and was therefore rescinding NEVI Formula Program Guidance.

15 16. The February 6 letter further claimed that FHWA “aims to have an updated
16 draft NEVI Formal Program Guidance published for public comment in the spring” and that
17 the Agency “will publish updated final NEVI Formula Guidance that responds to comments
18 received” after the public comment period has closed.

19 17. Finally, the FHWA informed DelDOT that it would be “immediately
20 suspending the approval of all State Electric Vehicle Infrastructure Deployment plans for all
21 fiscal years” and prohibiting future obligations “under the NEVI Formula Program until the
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1 updated final NEVI Formula Program Guidance is issued and new State plans are submitted
2 and approved.”

3 18. The February 6 letter therefore made clear that Delaware would not have access
4 to the \$7,532,826 of FY25 NEVI program allocation previously provided and the anticipated
5 FY26 NEVI program allocation to be provided. Of this amount, \$3,766,409 of FY25 NEVI
6 program was previously allocated through FHWA’s financial system, FMIS, to Delaware with
7 the approval of Delaware’s FY2025 NEVI plan update. As a result of the rescission of the state
8 plan approvals, this funding has been removed from FMIS and, therefore, Delaware cannot
9 access this funding for further NEVI programing or to cover \$49,875 of deferred advance
10 construction funding for an FHWA approved NEVI project. In addition, FHWA has not
11 provided direction on how to access the remaining \$3,766,417 of FY26 NEVI apportionment.
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13 19. DelDOT relied and acted upon the FHWA’s statutory obligation to provide
14 NEVI formula funding consistent with the IIJA’s requirements. DelDOT’s NEVI Program roll
15 out requirements, to include the NEVI sites, construction oversight and management over the
16 required 5-year period, data collection and reporting of site usage as required by the NEVI
17 program, public outreach and coordination, are all reliant on the receipt and ability to utilize
18 the NEVI funding authorized. Vendors have expressed concern about the certainty of the
19 NEVI funding while working towards executing NEVI contracts with DelDOT. Without being
20 able to utilize the unallocated funding, DelDOT cannot move forward with the NEVI Program
21 goals to fully build out Delaware’s AFC designated routes and, eventually, provide EV
22 charging for community access. In addition, \$49,875 of funding from another FHWA, non-
23 NEVI program or state funding will be needed to cover the \$49,875 of deferred advance
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1 constructed funding because FHWA has removed all access to the FY25 NEVI apportionment
2 as well as the planned FY26 NEVI apportionment.

3 20. DelDOT anticipates continued and increased difficulties in securing future
4 contractors to participate in the NEVI program due to the uncertainty caused by the actions of
5 FHWA in suspending the funding and plan approvals. Delaware's ability to meet climate goals
6 as outlined in Delaware's Climate Action Plan will be compromised with this suspension of
7 funding and rescission of plan approvals. DelDOT's EV charging infrastructure plan titled,
8 "Charging Forward: Delaware's Strategy for Electric Vehicle Charging Infrastructure (2024)"
9 which included the NEVI plan to support Delaware's Action Plan will also be compromised.
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12 I declare under penalty of perjury under the laws of the United States that, to the best of
13 my knowledge, the foregoing is true and correct.
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15 DATED this 5th day of May, 2025, at 3:36, AM(PM.)

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17 
18 Shanté A. Hastings
19 Cabinet Secretary of the
20 Delaware Department of Transportation
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